

IN THE MATTER OF	:	BEFORE THE
CHESAPEAKE CONFERENCE	:	HOWARD COUNTY
ASSOCIATION OF SEVENTH	:	BOARD OF APPEALS
DAY ADVENTISTS	:	
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 08-051C

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DECISION AND ORDER

On December 8, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the conditional use petition of the Chesapeake Conference Association of Seventh Day Adventists ("CCASDA") for a child day care center and to enlarge a Structure Used Primarily for Religious Activities in an R-12 (Residential: Single) Zoning District, filed pursuant to Section 131.N.46 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

J. Victor Elliott, Esquire, represented the Petitioner. Marilynn Peeke testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The 6.47 acre, irregularly shaped property is located in the 5th Election District, southeast of Martin Road, opposite Quarterstaff Road, and between Martin Road and the southbound lanes

of US 29 It has a street address of 6520 Martin Road and is referenced on Tax Map 36, Block 19, as Parcel 148 (the "Property").

2. The Property is the site of a religious facility and private school. The brick religious facility and school building are located about 100 feet from the north lot line. To their north and northeast is a large paved parking lot and passenger drop-off/pickup area. To the schools northwest and west is a playing field and playground. A modular classroom building and shed are located in the parking lot's northeast corner.

3. The Property is accessed via a paved, two-lane curving driveway off Martin Road. Near the church's south side, the driveway "Ts" off to the south and north. It is primarily open lawn, with existing vegetation nears the buildings and along the west and northern perimeters.

4. Vicinal Properties. To the Property's north, the R-20 zoned lots are improved with single-family dwellings fronting on Tanager Lane and Cell Road. An apparently nonconforming medical office occupies northern lots 12 and 13 and its parking lot borders the Property, with a short driveway connected to the religious facility's northern parking lot. This use was approved in BA 458-C (1964) as a special permit for an Office and Bible Book House. Southern Parcel 335 is improved with a CCASDA office building, Beyond Parcel 335 is a wooded open space area and a stream and the exit ramp from US 29 to Seneca Drive. Across Martin Road to the southwest, the R-12 zoned lots are improved with single-family detached dwellings. To Martin Road's west is the Hickory Ridge Section 1, Area 2, Open Space Lot 304. To the northwest is the Clemens Crossing Elementary School and a community swimming pool.

5. Roads. Martin Road has two travel lanes and turning lanes along the Property's frontage and a variable pavement width within a variable right-of-way. The posted speed limit is 30 MPH.

6. The estimated sight distance from the existing southern driveway entrance is more than 700 feet to the north and more than 500 feet to the south. The traffic volume on Ilchester Road south of the county line was 3,040 average daily trips as of October 2004.

7. The Property is served by public water and sewer.

8. Policies Map 2000-2020 of the 2000 General Plan designates the Property as "Residential Areas." The General Plan Transportation Map depicts Martin Road as a Major Collector.

9. In BA Case No. 99-060E, the Board of Appeals approved the Petitioner's special exception request to establish a child day care center and enlarge an existing religious facility and private school. The private school enlargement is complete. However, because the Board approved the request on April 11, 2000, the proposed enlargement of the religious facility and the establishment of a day care center conditional uses are void because the Petitioner failed to establish these uses by obtaining building permits conforming to the plans within two years and to begin substantial construction within three years.

10. Because the Petitioner's conditional use request is identical to the request approved in BA Case No. 99-060E, and it did not submit new information concerning the proposed use, the BA 99-060E decision and order is incorporated by reference into this petition.

11. Based on the BA 99-060E decision and order, the Petitioner is proposing a one-story, 4,000 square-foot addition to the west side of the existing religious facility. The number of seats in the main assembly area will increase to 500 seats. The principal hours of operation are 9:00

a.m. to 1:00 p.m. on Saturdays. The Petitioner is also proposing a 4,200 square foot, child day care center. The child day care center use will be limited to 50 children, with 9 employees. The proposed hours of operation are 7:00 a.m. to 6:00 p.m., Monday through Friday.

12. In response to questioning, Marylinn Peeke testified that the drop-off area for the day care center is closed off in the morning and afternoon and traffic cones direct drivers to turn around to pick up children at the building's east side. She also stated the total number of students would be 220.

13. The current parking configuration was approved with Site Development Plan 01-002 on January 26, 2001.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

A. The General Plan.

Section 131.B requires me to evaluate the proposed conditional use's harmony with the land uses and policies indicated in the Howard County General Plan for the R-ED zone. In evaluating a plan under this standard, I must consider (a) the nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and (b) if a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate, given the adequacy of proposed buffers and setbacks.

In this case, the institutional nature of the proposed use is consistent with the residential area. Including all existing and proposed buildings, the use comprises about 50 percent of the total

Property acreage. It is located along a major collector, with close access to US 29. I conclude the location and size of the site in relation to the use, including streets providing access, are such that the religious facility expansion and day care center are harmonious with the land uses and policies indicated in the General Plan.

B. Adverse Impacts. Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (4) access.

When assessing a proposed conditional use under these criteria, we must begin with the realization that virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed use would have adverse effects in an R-A-15 district. The proper question is whether those adverse effects are greater at the proposed site than they would be generally elsewhere within the R-A-15 district. *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, the Petitioner has met its burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish the proposed expansions will not have adverse effects on vicinal properties beyond those ordinarily associated with the expansion of a religious facility and private school in the R-12 district.

a. Physical Conditions. The impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The proposed additions will generate no inordinate adverse uses. The uses will be predominately indoors, and the proposed additions meet all setback requirements. There was no evidence of inordinate noise or lighting. I therefore conclude that any adverse impacts such as noise, dust, fumes, orders, lighting, vibrations, hazards, or other physical conditions will not be greater at the original site than generally elsewhere.

b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

The location and height of the proposed additions will be similar to the existing buildings and will comply with R-12 height regulations. I conclude the nature, location, and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use would not hinder or discourage the development and use of adjacent land and structures.

c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

The current parking configuration includes 167 parking spaces for a 500-seat assembly. These parking spaces are adequately sized and properly located. All parking areas, loading areas, driveways, and refuse areas will remain properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties. The ingress and egress

drives will continue to provide safe access with adequate sight distance, based on actual conditions.

d. Access. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

The combinations of conditional uses on the Property, which will share access with the existing office facility on Parcel 335, are an appropriate intensity and scale of uses.

II. Specific Criteria for Structures Used Primarily for Religious Activities (Section 131.N.39)

Structures used primarily for religious activities are permitted in the R-12 zoning district subject to three requirements.

a. Lot coverage shall not exceed 25 percent of lot area.

The total lot coverage of the existing and proposed buildings and uses is about 15 percent, in compliance with the requirement that the combined area of the use would be less than 25%.

b. Structures used primarily for religious activities may be erected to a greater height than permitted in the district in which it is located, provided that the front, side and rear setbacks shall be increased one foot for each foot by which such structure exceeds the height limitation.

This section is not applicable.

c. The Hearing Authority may approve parking facilities which are accessory to a religious facility, and are located on a separate lot, but do not meet the location requirements of subsection 133.B.4.D of the parking regulations by being separated from the religious facility by a public street, if the Hearing Authority finds that the accessory parking facility complies with the following criteria:

- (1) The accessory parking facility is not separated from the lot containing the principal use by an arterial highway of any category.
- (2) A pedestrian street crossing connecting the accessory parking facility lot to the principal use lot is provided and is made clearly noticeable to drivers by means of both pavement marking and signs.
- (3) The pedestrian street crossing is safe, based upon such factors as, but not limited to: traffic volume at the times(s) of the use of the accessory parking facility; practical traffic speeds; sight distance; length of the crossing; and adequate markings and signage.
- (4) The entire pedestrian pathway from the accessory parking facility to the principal religious facility is a durable, paved, no-step path.

This criterion does not apply to the conditional use request.

II. Specific Criteria for Child Day Care Centers and Nursery Schools, Day Treatment and Care Facilities (Section 131.N.13)

- a. On-site circulation and parking areas shall be designed to minimize vehicular/pedestrian conflicts and to provide safe areas for dropping off and picking up passengers.

The area of the driveway used for dropping off and picking up passengers will be closed off and the circulation area will be denoted by traffic cones, in accordance with Section 131.N.13.a.

- b. For child day care centers or nursery schools in industrial or commercial districts, outdoor play areas shall be fenced, screened and located to minimize exposure to noise and other emissions from roads, parking areas, and industrial activities.

This section does not apply.

- c. The minimum lot size for child day care centers shall be 500 gross square feet of lot area per child.

Because the Property is 6.478 acres in size, the proposed use complies with Section 131.N. 13.c.

- d. Outdoor play areas or activity areas shall be fenced, located to the side or rear of the principal structure, and buffered from adjoining residential properties by landscaping or adequate distance or both.

The play areas will be located to the side of the center. As a condition of approval, the play or activity area shall be fenced. The proposed use complies with Section 131.N. 13.d.

e. Parking areas shall be located and landscaped to minimize their visibility from roads and adjacent residential properties.

The parking lot is located to the rear and side of the existing structures and the perimeter landscaping minimizes their visibility, in accordance with Section 131.N.13.e.

f. The design and massing of proposed structures or additions to existing structures shall be generally compatible in scale and character with residential properties in the vicinity of the site, as demonstrated by architectural elevations or renderings submitted with the petition. Additional setbacks from property lines and landscape buffering shall be required if necessary to make the appearance of the site compatible with surrounding residential properties.

As concluded in BA 99-060E, the outdoor play area will be buffered from adjoining residential properties by the required landscape buffer and must be 20 feet from the property line, as a condition of approval, in accordance with Section 131.N.13.f.

g. For facilities in residential districts with a capacity of more than 30 children or adult clients at one time, the following standards apply:

(1) The site has frontage on and direct access to a collector or arterial road designated in the General Plan, except that expansions of a conditional use that was approved prior to the effective date of Council Bill No. 11-2001 are permitted.

The proposed use fronts on and has access to a Major Collector.

(2) Buildings, parking areas and outdoor activity areas will be at least 50 feet from adjoining residentially-zoned properties other than public road right-of-ways.

The Hearing Authority may reduce this setback to no less than 20 feet or the minimum setback required by the zoning district, whichever is greater, if:

(a) The adjoining land is committed to a long term institutional or open space use that provides an equivalent or better buffer for vicinal residential

development; or (b) The petition includes detailed plans for screening, consisting of a combination of a solid fence or wall and landscaping, or an equivalent combination, that presents an attractive and effective buffer for neighboring residential properties.

(3) At least 20 percent of the area within the building envelope shall be green space, not used for buildings, parking area or driveways. The building envelope is formed by the required structure setbacks from property lines and public street rights-of-way.

Subject to the condition that the outdoor play and parking areas be 20 feet from the property line to the north and landscaped as required by the Landscape Manual, and fenced, the use will comply with Section in accordance with Section 131.N.13.g.

ORDER

Based upon the foregoing, it is this 22nd day of December 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the petition of the Chesapeake Conference Association of Seventh Day Adventists to expand an existing religious facility with a 4,000 square-foot addition and a private school with a 4,200 sq. ft. child day care center in an R-12 Zoning District is **GRANTED**.

Provided, however, that:

1. The conditional uses shall apply only to the proposed enlargement of an existing religious facility and to a proposed child day care center, as described in Board of Appeals Decision and Order BA 99-060E, and not to any other activities, uses, or structures on the subject property.
2. The outdoor play area shall be 20 feet from the property line to the north, fenced, and landscaped as required by the Landscape Manual.
3. Any new lighting shall comply with the Zoning Regulations.
4. The Petitioner shall comply will all applicable Federal, State, and County laws and regulations.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.